

EXHIBIT B

**HIGHLY CONFIDENTIAL
PURSUANT TO PROTECTIVE ORDER**



Transcript of Richard Scheff

Wednesday, September 6, 2023

***United States, et al. v. JetBlue Airways Corporation
and Spirit Airlines, Inc.***

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Reference Number: 132438

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF MASSACHUSETTS

3 - - - - - X

4 UNITED STATES OF AMERICA, et :

5 al., :

6 Plaintiffs, : Case No.

7 v. : 1:23-cv-10511-WGY

8 JETBLUE AIRWAYS CORPORATION :

9 AND SPIRIT AIRLINES, INC., X

10 Defendants.

11 - - - - -

12 VIDEOTAPED DEPOSITION OF

13 RICHARD SCHEFF

14

15 HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

16 Washington, D.C.

17 Wednesday, September 6, 2023

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1 Videotaped deposition of RICHARD SCHEFF, a
2 witness herein, called for examination by counsel for
3 the Plaintiff in the above-entitled matter, pursuant
4 to notice, the witness being duly sworn by Desirae S.
5 Jura, a Notary Public in and for the District of
6 Columbia, taken at the offices of Shearman &
7 Sterling, 401 Ninth Street, NW, Washington, D.C., at
8 9:07 a.m., Wednesday, September 6, 2023, and the
9 proceedings being taken down by Stenotype by Desirae
10 S. Jura, RPR, and transcribed under her direction.

1 and move forward as much as possible, and not use
2 2019. It depends on the context of the analysis.

3 Q. Do you have an opinion as to when more
4 recent data, whether it's 2023 or some time in the
5 future, will be, I guess, a more relevant benchmark
6 for analysis than 2019 will be?

7 MR. MITCHELL: Objection to the form.

8 THE WITNESS: I think it depends very much
9 on the region. You really have to look case by case
10 and decide what time period is most relevant.

11 BY MR. DeRITA:

12 Q. All right. Let's turn -- and this is the
13 last topic for a while, so we can take a break soon.
14 Let's turn to page 11, paragraph 21.

15 A. Okay.

16 Q. I understand that the Spirit total
17 utilization is lower overall in 2023 than its
18 long-term target due to operational constraints,
19 primarily limited total crew availability. What is
20 your understanding of those constraints?

21 A. My understanding is that due to pilot
22 attrition, due to hiring issues, that the total

1 number of hours that Spirit is able to fly is -- that
2 they can staff, is less than their target. So they
3 deliberately have to choose to fly fewer hours.

4 Q. This sentence says, primarily limited
5 total crew availability. Are there other operational
6 constraints that have led to total utilization being
7 lower in 2023?

8 MR. MITCHELL: Objection to the form.

9 THE WITNESS: Total utilization, I mean,
10 there are always air traffic control issues in New
11 York. There are things going on. But I don't -- I
12 use primarily, because I think it captures most of
13 the issue, but I don't have a full list. But there
14 are always different operational constraints that
15 affect the schedule.

16 BY MR. DeRITA:

17 Q. In the next sentence, you write, for this
18 reason, I have used schedule utilization patterns
19 from 2019 to assess the likely implications of future
20 utilization on a merged schedule and fleet. Why is
21 that the case?

22 A. Well, that's the case because I didn't

1 want to look at a seat production level that was
2 artificially lower than what I would expect in the
3 long term. So I looked at the patterns from when
4 those pilot constraints were not directly affecting
5 the output.

6 Q. So would you say that 2023 utilization for
7 Spirit is atypical of what it would be in other time
8 periods?

9 MR. MITCHELL: Objection to the form.

10 THE WITNESS: If Spirit is able to
11 increase their pilot staffing, then I would expect
12 that they would have -- the utilization would move
13 more closely to prior periods.

14 BY MR. DeRITA:

15 Q. And if we can just quickly flip to page 9,
16 figure 2.

17 A. Yes.

18 Q. So would you say that 2019 is a more
19 representative year to consider when comparing
20 utilization than 2023 would be due to the operational
21 constraints we just discussed?

22 MR. MITCHELL: Objection to the form.

1 seat utilization.

2 Q. So also in her report, Dr. Chipty states,
3 Spirit may generate many more flown seats than
4 JetBlue by running many short haul flights with more
5 idle time. Do you agree with that statement?

6 MR. MITCHELL: Objection to the form.

7 THE WITNESS: No, I don't see any context.
8 I haven't assessed how much idle time they have.
9 Idle time is very specific. If you're at an
10 airport -- for example, if you have an hour of idle
11 time, you can't add a flight, you can't go anywhere
12 and come back. So I think there's no context for
13 whether Spirit has time that could be converted into
14 service or not. So I don't have a view that
15 that's -- that that would happen.

16 BY MR. DeRITA:

17 Q. So you haven't assessed any combined
18 network plans that would say whether Spirit would be
19 able to fly more or less flights post merger, one way
20 or the other?

21 MR. MITCHELL: Objection to the form.

22 THE WITNESS: Well, again, if we go back

1 to the days and the seasons where Spirit has reduced
2 and doesn't fly, for example, a lot of
3 Tuesday-Wednesday service, that is time that can
4 potentially be converted to additional flights,
5 whether flying a three-and-a-half hour flight instead
6 of a four-and-a-half hour flight allows more flights
7 is very context dependent. And I don't have a view
8 of whether that would occur.

9 BY MR. DeRITA:

10 Q. We had already talked about this earlier
11 today, but Exhibit 18 of your report, that assesses
12 utilization changes and converts them into a measure
13 of seat departures; is that right?

14 MR. MITCHELL: Objection to the form.

15 THE WITNESS: The utilization measure in
16 figure 18 is seat departure.

17 BY MR. DeRITA:

18 Q. But you also use line utilization at other
19 points in your report, correct?

20 MR. MITCHELL: Objection to the form.

21 THE WITNESS: Yes, the report has used
22 line utilization as well as utilization defined by

1 Q. Is there anything that would prevent
2 Spirit from increasing utilization in non-peak months
3 if no merger with JetBlue were to happen?

4 MR. MITCHELL: Objection to the form.

5 THE WITNESS: You know, Spirit could
6 change their practices and their tactics going
7 forward, given their -- as a ULCC, they're focused on
8 leisure markets heavily, and also on leisure
9 passengers in many markets. That tactic is
10 consistent, but of course, they could do -- they
11 could change and do something different if they
12 chose. I don't have insight into that.

13 BY MR. DeRITA:

14 Q. So you didn't evaluate whether Spirit has
15 any plans going forward -- and again, when I say
16 standalone basis, I mean putting aside the potential
17 merger -- Spirit has any plans to increase its
18 utilization in non-peak months?

19 MR. MITCHELL: Objection to the form.

20 THE WITNESS: I based my analysis on what
21 Spirit has done in 2019, and what they are doing
22 currently and -- but I don't have insight into what

1 profitability of the Spirit fleet?

2 MR. MITCHELL: Objection to the form.

3 THE WITNESS: You're talking in a post
4 merger situation?

5 BY MR. DeRITA:

6 Q. Yes.

7 A. Well, I mean, I'll give you an example.
8 Spirit has -- they serve a number of markets that do
9 -- or routes, city pairs, that have a significant
10 business component. And it's quite possible that an
11 airline who has that as a bigger piece of their
12 target audience would operate on business days, where
13 an airline who is relying very heavily on leisure
14 travel would not find it profitable to operate on
15 those days.

16 Q. Have you done any analysis as to which
17 routes Spirit's off-peak utilization might increase
18 post merger?

19 A. I have looked -- I haven't done analysis
20 on specific profitability, but I have looked at
21 schedule patterns. So for example, in Austin, which
22 is a fairly large business market with a lot of high

1 tech, in 2019, Spirit operated ten flights a day,
2 Wednesday through Monday, and only four on Tuesday
3 and Wednesday. Flights to Chicago and Los Angeles,
4 Detroit. I don't remember which ones were cut back.

5 I looked at a number of Atlanta markets,
6 for example, I live there, and there's a lot of
7 markets like Atlanta-Baltimore, Atlanta-Cleveland,
8 whether there's reduction on Tuesday and Wednesday.
9 Those are markets I consider important business
10 markets. And so on an observational basis, without
11 quantifying, I did look at whether it seemed
12 reasonable that JetBlue would operate a number of
13 those markets.

14 Q. When you say would operate, are you
15 talking about markets that Spirit operates today, and
16 whether they would operate those markets as a
17 combined airline?

18 A. Right. So, for example, let's go to
19 Atlanta-Baltimore, with Spirit operating 12 flights a
20 week. So only one on Tuesday and Wednesday, and two
21 the other days. I would think it's very possible
22 that JetBlue would choose to operate 14 a week, and

1 operate Tuesday, Wednesday, both flights. So those
2 types of pattern are what would be consistent with
3 how JetBlue operates.

4 Q. Is it fair to say that Spirit reduces its
5 flying in off-peak months because there's less
6 consumer demands for the routes that Spirit flies in
7 those months?

8 MR. MITCHELL: Objection to the form.

9 THE WITNESS: Well, I mean, I don't have
10 insight into exactly the demand. I think Spirit
11 reduces their capacity in off-peak -- or off-peak
12 days when they view that it would not be profitable
13 to operate. So generally, lower demand does lead to
14 less profit. But that's an analysis that Spirit
15 makes. I don't have their profits by day.

16 BY MR. DeRITA:

17 Q. So if that's your understanding as to why
18 Spirit changes its flying patterns, why would the
19 Spirit fleet increase utilization, as you suggest in
20 your report, if it's facing lower demand, which as
21 you said, does lead to less profit?

22 MR. MITCHELL: Objection to the form.

1 MR. MITCHELL: Objection to the form.

2 THE WITNESS: No, I have not made any
3 assumption that they would reallocate to different
4 routes.

5 BY MR. DeRITA:

6 Q. Does your analysis account for whether the
7 Spirit fleet is actually capable of being utilized
8 for more hours?

9 MR. MITCHELL: Objection to the form.

10 THE WITNESS: I think it's inherent --
11 what you can operate -- if you can operate five days
12 a week, for example, or what you can operate in a
13 peak day, that reflects your capability and capacity
14 to operate.

15 So by doing this seasonal and day of week
16 reductions, I think it's essentially self-evident
17 that there is more capability to add on those days.
18 I don't address whether they can add flying in the
19 peak periods.

20 BY MR. DeRITA:

21 Q. The question I'm really getting at is, I
22 mean, can the planes just actually be in the air more

1 a plane to fly out on. So that's the purpose of that
2 variable.

3 Q. And would that flight that's scheduled
4 later in the day, would that be returning to the home
5 base of that first plane that that crew flew in on?

6 MR. MITCHELL: Objection to the form.

7 THE WITNESS: It could go -- I mean, the
8 crew's scheduling -- it doesn't necessarily have to
9 go to the home base, no. It just means that there's
10 an airplane for them to fly out. Generating the
11 pairings, and where the airplane goes, is a separate
12 process.

13 BY MR. DeRITA:

14 Q. Row M, slot.

15 A. Yes.

16 Q. What -- or how does that constraint work
17 in FAM?

18 A. You're able to set a maximum number of
19 arrivals, departures, or operations for a specific
20 time window at an airport.

21 Q. What does that actually look like in FAM?
22 So would you have the option of entering a slot for

1 each hour, or is it something else? Like, can you
2 just kind of help me visualize that?

3 A. It's a time window. So you might say
4 between 0700 and 0800 in DCA, that my maximum number
5 of departures is three. So you can set -- that's the
6 sort of format that the constraint would take.

7 Q. So if you had, using your example, for
8 between 0700 and 0800, you have three, and the
9 airline has one slot between 0801 and 0900, there's a
10 separate entry for the number of slots in that second
11 time slot?

12 MR. MITCHELL: Objection to the form.

13 THE WITNESS: You can have -- yes, you
14 could have multiple entries for a single station.

15 BY MR. DeRITA:

16 Q. Okay. I'm going to hand you something
17 that's being marked as Exhibit 7.

18 (Scheff Exhibit No. 7 was identified
19 for the record.)

20 BY MR. DeRITA:

21 Q. And this one's a little funky. So just to
22 explain what it is, this is a screenshot taken from

1 the July 2023 schedule.

2 BY MR. DeRITA:

3 Q. At airports that require slots or
4 authorizations -- you mentioned DCA, so we can just
5 use that as the example. Does your run of FAM that
6 popped the 15 aircraft consider whether or not the
7 combined airline would have the slots to fly at any
8 adjusted times that FAM suggested?

9 A. The FAM did not have a constraint for
10 that. I did happen to look at DCA at the before and
11 after, and by the slot windows. My investigation --
12 what I saw showed that they had the same number of
13 flights in each hourly window as the before and
14 after. But I did not force slot constraints as a
15 condition of the FAM run.

16 Q. Did you do a similar look at slot windows
17 after the FAM run at JFK?

18 A. I took a brief look. I spent more time --
19 I looked at LaGuardia. And I did see some changes.
20 In practice, what would happen is that each schedule
21 is an interactive process, where you make changes,
22 you add flights. And then you work with the

1 scheduling team, and you see if there are
2 situations -- for example, here the allowable
3 increments were 20 minutes or 40 minutes or 60
4 minutes, the model. It's a model limitation, but if
5 something, for example, moved outside of a slot, it
6 might be only a five-minute move to fix. But I
7 did -- I did take a look, and I did see that there
8 were some changes.

9 Q. Did you look at -- and some people call
10 them slots, some call them operating authorizations,
11 but did you look at the operating authorizations at
12 Newark to see whether or not the FAM model conflicted
13 with what was held by JetBlue and Spirit?

14 MR. MITCHELL: Objection to the form.

15 THE WITNESS: I did not look specifically
16 at Newark. I did very intentionally limit the
17 changes, so that the retimings were quite small for
18 the express purpose of making it much simpler and
19 easier to fix any violations that might occur.

20 BY MR. DeRITA:

21 Q. Are you aware of the divestitures that
22 have been proposed and now agreed to with third-party